

Advisory Opinion #98-1

(adopted January 23, 1998)

Question: *May a judge allow a state official of the executive or legislative branch to sit on the bench next to the judge or in-court clerk while observing court in session?*

Opinion: Providing any preferential seating to visiting state officials that is not available to the general public while court is in session creates an appearance of impropriety in violation of Canon 2 of the Code of Judicial Conduct. State officials hold positions of power within state government that, through the doctrine of separation of powers, is meant to be distinct from the role of state courts. Treating a state official differently from any other member of the public by giving that official preferential seating, creates the appearance to the average observer that the official has special access to the court and its decision-making. While state officials have a special interest in observing how the courts are run to assist in proper legislative or executive decision-making, any questions regarding the court process can be addressed to the judge in private outside of the official public court session. So too, special demonstrations of equipment can be arranged for private observation by state officials, separate from the official court proceeding or special seating arrangements can be provided to both the officials and the public generally to allow observation of court equipment during proceedings.

Other special observers may not necessarily come under this opinion. Often school children tour the courts and are seated in special places, at times on the bench. Children are not in a position of power and, therefore, do not create an appearance of improper influence especially when their presence is explained to be for an educational purpose.